

The claimant alleged injury to his shoulder lifting a box at work. He testified that he told his supervisor on the day of the incident. His supervisor denied claimant told him he suffered a work-related injury. A co-worker and claimant's friend reported that claimant told him he hurt his shoulder deer hunting. The Administrative Law Judge (ALJ) concluded the claimant's testimony was inconsistent regarding the specifics of his injury as well as whether he engaged in deer hunting and there was overwhelming evidence to controvert claimant's testimony. Consequently, the ALJ determined claimant failed to meet his

burden of proof that he suffered accidental injury arising out of and in the course of his employment.

The claimant requests review of whether the ALJ erred in finding that the claimant's accidental injuries did not arise out of and in the course of employment. If it is determined claimant suffered a compensable injury, the parties agree that claimant is entitled to a 4 percent functional impairment to the shoulder.

Respondent argues the ALJ's Award should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

After reviewing the entire record and after considering the parties arguments, the Board finds and concludes the June 13, 2003 Award should be affirmed. Judge Moore set forth in detail the pertinent facts in this claim. The Board notes that the ALJ's Findings of Fact indicate claimant alleged he injured his left shoulder lifting boxes on December 20, 2001. However, the claimant alleged injury to his right shoulder. And the ALJ indicated that nature and extent was an issue but the parties stipulated claimant suffered a 4 percent functional impairment. Respondent noted that there could be an issue about the apportionment of that 4 percent impairment among the three alleged dates of accidental injury. That issue was never explored fully nor was it developed in the record. Instead, the claimant focused upon a single date of accident, specifically the alleged December 20, 2001, lifting boxes incident. The Board otherwise adopts the Judge's findings and analysis in all other respects.

In summary, the record fails to establish the claimant's injury arose out of and in the course of his employment. Claimant's supervisor denied that claimant reported the alleged December 20, 2001 accident and claimant worked that day and the following day. The plant was shut down and when it reopened the claimant then told a co-worker that he had injured his shoulder while deer hunting but was going to report his injury as work-related in order to have respondent pay for the injury. In addition, the claimant's testimony was not credible regarding whether or not he had gone deer hunting, why he had deer permits but no gun and whether he had ever been deer hunting. As further noted by the ALJ there were sufficient inconsistencies in claimant's testimony and sufficient contrary evidence to rebut that testimony such that claimant failed to meet his burden of proof that he suffered accidental injury arising out of and in the course of his employment.

#### **AWARD**

**WHEREFORE**, it is the finding of the Board that the Award of Administrative Law Judge Bruce E. Moore dated June 13, 2003, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Richard A. Boeckman, Attorney for Claimant  
James M. McVay, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Anne Haught, Acting Workers Compensation Director